

Tamworth School Board filed its answer on December 18, 1996. The matter was heard before the undersigned hearing officer on January 15, 1997.

FINDINGS OF FACT

1. The Tamworth School Board employs teachers and educational support personnel in the operation of its school and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. On April 22, 1996, the Tamworth School Board, suggested the establishment of a bargaining unit of support personnel in its answer to the Association's April 10, 1996 petition to modify the teachers' bargaining unit with the inclusion of support personnel. The original certification file contains a letter to the PELRB from Tamworth's counsel, Jay Boynton, Esq., dated June 14, 1996, which indicates that the parties were in agreement that a bargaining unit of support personnel was to be certified. The inclusion of two positions in the agreed upon bargaining unit remained at issue.
3. The matter of the inclusion of two positions, the head cook and head custodian, was heard before the Board on June 16, 1996, and a decision to include the two positions was issued on July 11, 1996. PELRB Decision No. 96-053. That same day, there followed a certification document which erroneously included all the support personnel positions in the teachers' unit rather than a support personnel unit. The error was cured through a motion to amend the teachers' unit dated July 23, 1996 and a petition to certify the Tamworth Educational Support Personnel Association dated August 7, 1996, after which PELRB Decision No. 96-074 was issued on August 22, 1996.
4. According to the certification document, the Tamworth Educational Support Personnel Association/NEA-NH was duly certified as the exclusive bargaining agent for the educational support positions within the Tamworth School District by date of October 23, 1996.
5. Notice of intent to bargain, signed by President Margaret DeLong, was sent to the Tamworth School Board on September 19, 1996. When no response was received,

Ms. DeLong followed on November 6, 1996, with a renewed request to bargain the first collective bargaining agreement.

6. Superintendent Clifford Tyler answered on November 18, 1996, informing the Association that the School Board had voted on November 13, 1996, "...not to negotiate a new contract nor an abbreviated contract...for the 1997-1998 school year." The reason stated was that the new bargaining unit was not officially formed until well after October 1, the deadline for notice, 120 days prior to the budget submission date of February 1, 1997, as set forth in RSA 273-A:3 II. It was stipulated by the parties that Tamworth's budget submission date is February 1.

DECISION AND ORDER

RSA 273-A:3 II (a) requires that a party desiring to bargain give notice of its intent not less than 120 days before the budget submission date. This time limit is in place to allow ample time to negotiate "cost items" prior to the budget submission date and to resolve impasses through "...the larger scheme which initiates the use of mediation...and fact-finding..." all of which require significant time. Professional Fire Fighters of North Hampton v. Town of North Hampton, PELRB Decision No. 92-069. (April 9, 1992)

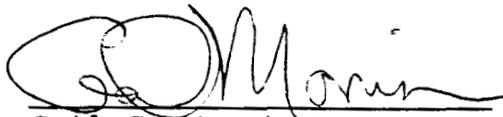
The parties had agreed that there was to be a bargaining unit for support personnel in April of last year and the one dispute between the parties as to the inclusion of the head custodian and the head cook was resolved in July. All was settled between the parties well before the 120 day statutory deadline of October 1, with the exception that the election for a bargaining agent was not conducted until October 23, 1996. Thus, there was no certified bargaining agent to give notice of intent to bargain until that date.

RSA 273-A:3 II (a) indicates that it is a "party" who must give notice to bargain. It is logical and defensible that the School Board would question whether there existed a "party" with which it was obligated to bargain on September 19, 1996, when the Association first gave notice to bargain and until the actual certification of the Tamworth Educational Support Personnel Association/NEA-NH as the exclusive bargaining agent by document of October 23, 1996.

No unfair labor practice resulted from the School Board's decision not to bargain before the certification was issued and from its refusal to bargain a contract requiring voter approval after the certification was issued but less than 120 days from the budget submission date. Notwithstanding, there may be proposed bargaining topics which do not involve "cost items." These non-"cost items" and matters for next year's contract are now subjects to be bargained upon demand from either party.

So ordered.

Signed this 10th day of March, 1997.

A handwritten signature in black ink, appearing to read "Gail C. Morrison". The signature is written in a cursive style with a large initial "G" and "M".

Gail C. Morrison
Hearing Officer